IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7828 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIMJIBHAI THACKERSIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7828 of 1999

MR GM JOSHI for Petitioner No. 1-70

MR DHARMESH V SHAH for Respondent No. 6

MR PR ABICHANDANI, AGP for Respondent No. 1-3

MR HS MUNSHAW for Respondent No. 4

..... for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/07/2001

ORAL JUDGEMENT

Rule. The learned counsel for the respective parties waive service of Rule. At the joint request, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioners, seventy in number, residents of village Panvi, Taluka Vallabbhipur in Bhavnagar District have challenged the order dated 7.7.1999 passed by the State Government rejecting the petitioners' revision application against the order dated 2.12.1998 passed by the Additional Registrar (Appeals), Cooperative Societies, Gujarat State which in turn had confirmed the order of the Assistant Registrar of Cooperative Societies, Bhavnagar approving the resolution dated 29.9.1997 passed at Annual General Meeting of Lunadhara Group Co-op. Service Society Ltd.

3. The grievance of the petitioners in this petition is that before the aforesaid resolution was purported to have been passed on 29.9.1997 for bifurcation of cooperative societies so as to carve out a new society called Panvi Seva Sahakari Mandali Ltd., respondent No. 6 herein, the individual members were not given any notice about such proposed bifurcation. It is also the grievance that after the purported bifurcation, the members were not given option of becoming members of respondent No. 5-society or respondent No. 6-society or the option of withdrawing their investment in the shares, deposits and loans with respondent No.5-society.

4. On behalf of respondent No. 6-society, affidavit in reply has been filed stating that the petitioners had given consent for bifurcation of respondent No.5-society. It is further stated that the bifurcation has already taken place and two societies are already in existence and, therefore, the impugned orders may not be interfered with. It is further contended that the petitioners were present at the meeting when the resolution for bifurcation was passed at the Annual General Meeting of respondent No.5-society.

5. Mr GM Joshi, learned counsel for the petitioners states that inspite of the categorical statutory provisions of Section 17(2) of the Gujarat Cooperative Societies Act, 1961 (`the Act' for short), the members were not given the option whether they wanted to become the members of respondent No.6-society or they wanted to continue their membership in respondent No.5-society or of withdrawing their investment in shares, deposits and loans with respondent No.5-society.

6. Mr Munshaw, learned counsel for respondent No. 4 relies on the affidavit dated 9.7.2001 filed by respondent No.4. However, the said affidavit does not throw light on the question whether the options were

given to the members under Section 17(2) of the Act.

7. Mr DV Shah, learned counsel for respondent No.6-society states that respondent No. 6 will have no objection if the members of respondent No. 6-society are now given any option to be the members of the cooperative society of their choice.

8. Having heard the learned counsel for the parties, it appears to the Court since the bifurcation of respondent No.5-society has already taken place more than two years ago and the major grievance of the petitioners is about not having been given the option to join respondent No.6-society or to continue to be the members of respondent No.5-society, it would be just and proper to dispose of this petition with a direction that on or before 10.8.2001, respondent No.4-Assistant Registrar of Co-operative Societies, Bhavnagar shall get published in the Saurashtra Samachar being published from Bhavnagar a public notice conferring option on the members of respondent No.5-Lunadhara Group Co-operative Service Society Ltd. and the members of Panvi Seva Sahakari Mandali Ltd. to continue to be the members of the respective societies or to join the other society. Such options shall be invited on or before 31.8.2001 and thereafter respondent No.4-Assistant Registrar of Cooperative Societies, Bhavnagar shall by 30-9-2001 pass appropriate orders in light of the options received.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)
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